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**ADVANCED LEGAL RESEARCH, ANALYSIS AND WRITING (307H1F), 2005-2006**

**MATERIALS – VOLUME I**

**Wendy Bellack-Viner**

**Faculty of Law  
University of Toronto**

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**ADVANCED LEGAL RESEARCH, ANALYSIS AND WRITING (307H1F), 2005-2006**

**MATERIALS - VOLUME I**

**Wendy Bellack-Viner**

1. References on Liability for Inadequate Research
2. N.A. Pantaloni, L.J. Sirico and E.M. Callinan, "Legal Research and the Summer Job ... Advice from the Law School ... Advice from the Law Firm" (1999) 7 Perspectives 110
3. R.M. Mersky and D.J. Dunn, Fundamentals of Legal Research, 8th ed., 2002, pp. 14-20
4. *Gibb v. Jiwan*, unreported, [1996] O.J. No. 1370 (O.C. G.D.), pp. 1-2, 9-15
5. T.A. Cromwell (ed.), Preparation of Factums, (Aurora: Canada Law Book, 1996), pp. 24-32
6. M.F. Fitzgerald, Legal Problem Solving: Reasoning, Research and Writing, 3rd ed., (Toronto: Butterworths, 2004), pp. 253-260
7. Excerpts from Factum of the Applicant, Greater Toronto Airports Authority, in *Greater Toronto Airports Authority v. The Corporation of the City of Mississauga* (O.C. G.D.)
8. Excerpts from Factum of the Respondent, The Corporation of the City of Mississauga, in *Greater Toronto Airports Authority v. The Corporation of the City of Mississauga* (O.C. G.D.)
9. List of Supplementary Reference Materials
10. Sources for Legal Research on the Internet
11. *A Neutral Citation Standard for Case Law – Executive Summary*, (December 2000), [http://www.lexum.umontreal.ca/ccc-ccr/neutr/neutr.jur.sum\\_en.html](http://www.lexum.umontreal.ca/ccc-ccr/neutr/neutr.jur.sum_en.html)

## References on Liability for Inadequate Research

Some secondary materials that address a lawyer's liability for inadequate research are:

L.D. MacLachlan, "Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers' Professional Responsibility to Research and Know the Law" (2000) 13 Geo. J. Legal Ethics 607

M.J. Newman, "Attorney Research Malpractice" (1991) 32 Law Office Economics and Management 85

T. Tjaden, "Legal Research and Writing Malpractice", Chapter 10 in *Legal Research and Writing*, 2<sup>nd</sup> ed., (Toronto: Irwin Law Inc., 2004)

M. Whiteman, "The Impact of the Internet and Other Electronic Sources on an Attorney's Duty of Competence under the Rules of Professional Conduct" (2000), 11 Alb. LJ. Sci. & Tech. 89

Relevant American cases are referenced in all of the above sources and Canadian cases are also noted in Ted Tjaden's *Legal Research and Writing* book. Some significant Canadian cases on this issue are:

*Gibb v. Jiwan*, unreported, [1996] O.J. No. 1370 (O.C. (G.D.)) (see in these course materials)

*Beals v. Saldanha* (1998), 42 O.R. (3d) 127 (O.C. G.D.), supp. reasons at [1999] O.J. No. 43, app. allowed in part on other grounds (2001), 54 O.R. (3d) 641 (C.A.), aff. [2003] 3 S.C.R. 416— This case is important with respect to the conflict of laws. However, it is also significant, in the trial decision, in terms of the risk of reliance on outdated information.

The lawyer consulted the Canadian Encyclopaedic Digest in his office and provided advice to the clients based on that research. At the clients' request, he said that he would speak to another lawyer about the matter. He went to the County Law Library to see if he could find a relevant text and could not do so. He discussed the problem over lunch with a colleague who confirmed the lawyer's original advice. The lawyer did not check with an American lawyer (the matter involved an American judgement against the clients), nor did he advise the clients to do so. The lawyer undertook no further research and reiterated his original advice.

The lawyer was unaware of a Supreme Court of Canada decision which had been rendered almost a year prior to his retainer. The decision signified a major change in the relevant law on which the lawyer had opined. Although the Supreme Court decision itself would not have changed the advice, lower court decisions subsequent to it had extended it in ways that were relevant to the advice provided in the case.

The court held that the solicitor had "... failed his clients and acted in a manner that was less than that of a competent solicitor" (at 148 O.R.) in failing to advise them of the



significant risk arising as a result of the Supreme Court decision. However, as the main action in this case was dismissed, the third party claim against the solicitor was also dismissed. Nonetheless, the third party claim was dismissed without costs.

*Lougheed Enterprises Ltd. v. Armbruster* (1992), 63 B.C.L.R. (2d) 316

The lawyer did not bring to the court's attention a reported case that was binding on the court; the court here discussed a lawyer's duty to bring relevant law to the attention of the court.

*Occidental Chemical Corp. v. Sovereign General Insurance Co.*, [2000] O.J. No. 4557 (Ont. S.C.J.)

This case addresses a lawyer's responsibility to advise of the risks of changes in the law. In an opinion letter to an insurer client, the law firm identified a relevant B.C. Court of Appeal decision that was on appeal to the Supreme Court of Canada and that, depending on the higher court's disposition of it, could alter the law on the point. The Supreme Court's decision did, ultimately, change the relevant law.

The insurer later claimed that its decision not to defend an action was based on the law firm's negligent advice. In rejecting the insurer's claim, the court stated (at p. 38 O.J.): "That was the law at the time. The risk that the law might change was researched, recognized and reported in the succinct manner customary with this client. [The lawyers] performed their duty to the client, within a reasonable standard of care."

For an article on liability for ineffective legal writing, see:

W.B. Davis, "Writing Clinic – An Attorney's Ethical Obligations Include Clear Writing" (2000), 72 N.Y. St. B.J. 50

## Advanced Legal Research, Analysis and Writing (307H1F)

### Selected Supplementary Reference Materials

T. Cromwell (ed.), *Preparation of Factums*, (Aurora: Canada Law Book, 1996).

M.F. Fitzgerald, *Legal Problem Solving: Reasoning, Research and Writing*, 3<sup>rd</sup> ed., (Markham: LexisNexis Butterworths, 2004).

M. Gannage, "Noting-Up Cases", (1999), 21 Adv. Q. 489.

M.J. Iosipescu and P.W. Whitehead, *Legal Writing and Research Manual*, 6<sup>th</sup> ed., (Markham: LexisNexis Butterworths, 2004).

D.T. MacEllven and M.J. McGuire, *Legal Research Handbook*, 5<sup>th</sup> ed., (Markham: LexisNexis Butterworths, 2003).

McGill Law Journal, *Canadian guide to uniform legal citation = Manuel canadien de la référence juridique*, 5<sup>th</sup> ed., (Scarborough: Carswell, 2002).

R.M. Mersky and D.J. Dunn, *Fundamentals of Legal Research*, 8<sup>th</sup> ed., (New York: Foundation Press, 2002).

J.C. Morton and M.E. Freeman, *Written Advocacy*, (Toronto: Butterworths Canada Ltd., 2000).

L.A. Peters, "Recovery of Legal Research Expenses in Taxations and Assessments of Costs" (1997) 55 The Advocate 79.

S.D. Stark, *Writing to Win: The Legal Writer*, (New York: Doubleday, 1999).

T. Tjaden, *Legal Research and Writing*, 2<sup>nd</sup> ed., (Toronto: Irwin Law Inc., 2004).

R. Wydick, *Plain English for Lawyers*, 4<sup>th</sup> ed., (Durham, N.C.: Carolina Academic Press, 1998).

A. Zivanovic, *Guide to Electronic Legal Research*, 2<sup>nd</sup> ed., (Markham: Butterworths Canada Ltd., 2002).

## Sources for Legal Research on the Internet

The sources for legal research on the Web are constantly increasing and changing. The reliability of web sites may change significantly over time and the currency of information on different web sites varies greatly. Generally, Internet sources are presently more complete and reliable for legislative research than case law research. The sources tend to be repetitive. A few key sources for Canadian legal research are:

Bora Laskin Law Library Legal Resources link – <http://www.law-lib.utoronto.ca> - provides links to sites for Canadian and foreign legal research; see also the Electronic Library (provides access to electronic subscriptions) and “Finding Legal Information on the Web”, a topically-organized source of information with website links

Canadian Legal Information Institute – <http://www.canlii.org> - provides links to primary materials, including judgments from court websites and legislation from across the country

Federal legislative materials: <http://laws.justice.gc.ca>

Ontario legislative materials: [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

T. Tjaden, *Legal Research and Writing*, 2<sup>nd</sup> ed. (Toronto: Irwin Law Inc., 2004), Chapter 5 – “Legal Research on the Internet” – provides comprehensive lists of various sources

Law Library Resource Exchange – <http://www.llrx.com> -  
T. Tjaden, “Doing Legal Research in Canada” ([llrx.com/features/ca.htm](http://llrx.com/features/ca.htm))  
L. Tsang, “Overview of Sources of Canadian Law on the Web, Revised” ([llrx.com/features/canadian4.htm](http://llrx.com/features/canadian4.htm))

*U.S. Law* –  
<http://www.law.cornell.edu> - Legal Information Institute – cases, legislation, etc.

<http://www.findlaw.com> - cases, legislation, Legal Subject Index, also has law from other countries

<http://www.law.com> - news, current cases – good for current awareness, legal practice and related information

<http://www.catalaw.com> - catalogue of legal sites

*U.K. Law* –  
<http://www.bailii.org> - British and Irish Legal Information Institute

*Australian Law* –  
<http://www.austlii.org> - Australian Legal Information Institute

